

## Internal Revenue Service

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PLR-134034-11

Date:

February 03, 2012

## Legend

Distributing 2 =

Distributing 1 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

PLR-134034-11	2
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Sub 5	=
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Sub 6	=
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Sub 7	=
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Sub 8	=
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Sub 9	=
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LLC	=
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Pship 1	=
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Pship 2	=
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Corp	=
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Business A	=
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Business B	=
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Business B1	=
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B1 Properties	=
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Business B2	=
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B2a Properties	=
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B2b Properties =

State A =

State B =

State C =

Shareholder A =

Shareholder B =

Shareholder C

Shareholder D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

a =

b =

c =

d =

e =

f =

g =

h =

Dear

This letter responds to your August 11, 2011 request for rulings on certain federal income tax consequences of the Proposed Transactions (as defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether either of the distributions described below: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of a distributing corporation or a controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code, as amended, and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in a distributing corporation or a controlled corporation (see § 355(e) and § 1.355-7).

### Summary of Facts

Publicly traded Distributing 2 is the common parent of an affiliated group of domestic corporations that files a consolidated Federal income tax return (the "Distributing 2 Group") and is engaged through its subsidiaries in Business A and Business B (including Business B1 and Business B2). The outstanding capital stock of Distributing 2 consists only of a single class of common stock. Based on publicly available securities information, only Shareholder A, Shareholder B, Shareholder C and

Shareholder D held five percent or more of the common stock on Date 1. The remaining shares of Distributing 2 are widely held and publicly traded. Distributing 2 is a holding company and has no assets other than all outstanding shares of Distributing 1 common stock.

Distributing 1, a State A corporation, owns 100% of the interests in Sub 1, a State A corporation, Controlled, a newly formed State A corporation, and LLC, a State A limited liability company disregarded as separate from Distributing 1 for Federal tax purposes under Treas. Reg. § 301.7701-3. LLC holds most of the assets used in Business A. Sub 1 owns a a-percent interest in Pship 1, a partnership for Federal tax purposes. The remaining b percent interest in Pship 1 is owned by Corp, an unrelated company.

Controlled wholly owns Sub 2, a State B corporation; Sub 3, a State B corporation; and Sub 4, a State A corporation. Sub 2 and Sub 3 engage in Business B1. Sub 2 manages Business B1, and Sub 3 owns and operates the B1 properties. Sub 4 acts as the holding company for subsidiaries engaged in Business B2.

Sub 4 wholly owns Sub 5, a State C corporation; Sub 6, a State A corporation; Sub 7, a State C corporation; and Sub 8, a State A corporation. Sub 5 owns and manages the B2a Properties.

Sub 5 wholly owns Sub 9, a State A corporation. Sub 6, Sub 8, and Sub 9 own a c-percent limited partnership interest, a d-percent general partnership interest, and a e-percent limited partnership interest, respectively, in Pship 2, a State C limited partnership. Pship 2 owns and manages all of the B2b Properties.

Distributing 1 previously entered into intercompany loan agreements with Sub 3 and Sub 4 in which Distributing 1 provided loans to Sub 3 and Sub 4 to fund their working capital and for other corporate business purposes.

Distributing 2 and the members of its “separate affiliated group” as defined in § 355(b)(3)(B) (“the “Distributing 2 SAG”) are engaged in Business A, principally through Distributing 1 and LLC; Distributing 1 and the members of its separate affiliated group (the “Distributing 1 SAG”) are engaged in Business A, principally through LLC and its subsidiaries; and Controlled and the members of its separate affiliated group (the “Controlled SAG”) are engaged in Business B (including Business B2), principally through Sub 2, Sub 3, and Sub 4. Financial information has been submitted indicating that Business A and Business B2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Proposed Transactions will separate Business A from Business B (i) to permit the Distributing 2 senior management to focus solely on Business A and the Controlled management to focus solely on Business B, thereby (a) allowing each business to pursue its own distinct opportunities and growth plans and (b) eliminating internal

competition for capital and other inherent managerial and operational conflicts; (ii) to permit Controlled to adopt a debt and capital structure more suitable for a growth-oriented company and thereby enhance its ability to raise capital (including through stock issuances) needed to take advantage of significant growth opportunities; and (iii) to provide each business with a key employee compensation program that relates solely to the performance of the business for which the key employees are responsible (collectively, the “Corporate Business Purposes”).

### Proposed Transactions

To achieve the Corporate Business Purposes, Distributing 2 proposes the following series of transactions (“Proposed Transactions”), some of which have already been completed:

- (i) On Date 2, Distributing 1 contributed all of the Sub 2, Sub 3, and Sub 4 stock and certain other assets associated with Business B to newly formed Controlled in exchange for all of the Controlled stock (Controlled and its subsidiaries, the “Controlled Group”).
- (ii) Between Date 3 and Date 4, Distributing 1 refinanced its third party debt through LLC (the “LLC Financing”) and Controlled (the “Controlled Financing”) and together with the LLC Financing, the “Refinancings”).
- (iii) On Date 5, the net proceeds from the LLC Financing (approximately f) and the Controlled Financing (approximately g), totaling h, were distributed by LLC (the “LLC Distribution”) and Controlled (the “Controlled Distribution”) to Distributing 1. Distributing 1 then used the Controlled Distribution to pay down debt owed by Distributing 1 to unrelated third parties (the “Third Party Debt”). The balance of the Third Party Debt was paid off using the LLC Distribution.
- (iv) On Date 7, Distributing 1 contributed certain trademarks associated with Business B1 to Controlled (together with Step (i), the “Contribution”).
- (v) On Date 8, Distributing 1 contributed certain real estate associated with Business A to LLC.
- (vi) Sub 1 will transfer its a-percent interest in Pship 1 to LLC.
- (vii) Intercompany debt owed between Distributing 1 and Sub 3 and Sub 4 will be paid off before the Internal Distribution in Step (viii).

- (viii) Distributing 1 will distribute all of the Controlled stock to Distributing 2 (the “Internal Distribution”).
- (ix) Before the External Distribution in Step (x), any excess loss account in the stock of an entity leaving the Distributing 2 Group (other than Controlled) will be eliminated by merger or other means.
- (x) Distributing 2 will distribute all of the Controlled stock to its shareholders (“Distributing 2 Shareholders”), pro rata (the “External Distribution,” and together with the Internal Distribution, the “Distributions”).

No fractional shares of Controlled stock will be issued in the External Distribution. Instead, all fractional shares of Controlled stock that Distributing 2 Shareholders otherwise would be entitled to receive will be aggregated by a transfer agent and, as soon as practicable following the effective time of the External Distribution, will be sold at the prevailing price on the NASDAQ Global Market. Any of the Distributing 2 Shareholders entitled to receive a fractional share of Controlled stock will be entitled to receive a cash payment in an amount equal to the shareholder’s proportionate interest in the net proceeds from the open market sale.

In connection with the Proposed Transactions, the Distributing 2 Group and the Controlled Group will enter into a variety of agreements (collectively, the “Continuing Transactions”) involving transitional services (the “Transitional Agreements”) and contingent obligations that arose before the Distributions (including those related to tax liabilities) (the “Contingent Agreements”).

Distributing 2 intends to exchange, before the External Distribution, all outstanding vested stock options for Distributing 2 common stock for an equivalent value of unrestricted shares of Distributing 2 common stock. At the same time, Distributing 2 intends to exchange all outstanding unvested stock options for Distributing 2 common stock for an equivalent value of restricted shares of Distributing 2 common stock (the new restricted stock together with the existing Distributing 2 restricted stock, the “Distributing 2 Restricted Stock”). As holders of Distributing 2 common stock (both restricted and unrestricted), the former option holders will receive shares in Controlled upon the External Distribution in the same manner and proportion as all other Distributing 2 Shareholders. A holder of Distributing 2 Restricted Stock will receive in the External Distribution shares of Controlled common stock subject to the same terms and restrictions that apply to the Distributing 2 Restricted Stock (“Controlled Restricted Shares”). The above-mentioned transactions involving restricted stock will be referred to as the “Restricted Stock Transactions.”

## Representations

Distributing 2 makes the following representations regarding the Contribution and Internal Distribution:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after the Internal Distribution will not constitute stock or securities.
- (b) No part of the consideration distributed by Distributing 1 in the Internal Distribution will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) Distributing 1 and Controlled will each treat all members of its SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (d) The five years of financial information submitted for Business A conducted by the Distributing 1 SAG and for Business B2 conducted by the Controlled SAG is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (e) Neither Business A conducted by the Distributing 1 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, the Distributing 1 SAG will have been the principal owner of the goodwill and significant assets of Business A, and the Distributing 1 SAG will continue to be the principal owner following the Internal Distribution.
- (f) Neither Business B2 conducted by the Controlled SAG (following the Contribution) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Distributing 1 and its subsidiaries (all members of the Distributing 1 SAG) will have been the principal owners of the goodwill and significant assets of Business B2. Following the Internal Distribution, Controlled and its subsidiaries (all members of the Controlled SAG following the Contribution) will be the principal owners.



- (g) Apart from the Continuing Transactions, Controlled (through Sub 4 and its subsidiaries, all members of the Controlled SAG) will continue the active conduct of Business B2, independently and with its separate employees, following the Internal Distribution.
- (h) Apart from the Continuing Transactions, the Distributing 1 SAG will continue the active conduct of Business A, independently and with its separate employees, following the Internal Distribution.
- (i) The Internal Distribution will be carried out to facilitate the External Distribution, which is being undertaken to accomplish the Corporate Business Purposes. The Internal Distribution is motivated in whole or substantial part by the Corporate Business Purposes.
- (j) The Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Controlled or Distributing 1 or both.
- (k) Except as described above, there is no plan or intention to liquidate any member of the Distributing 1 SAG engaged in Business A or any member of the Controlled SAG engaged in Business B2, to merge any member of either SAG with any other entity, or to sell or otherwise dispose of the assets of any member after the Internal Distribution, except in the ordinary course of business.
- (l) Controlled will not assume any liabilities (within the meaning of § 357(c)) in the Contribution.
- (m) The total adjusted basis and the fair market value of the assets transferred by Distributing 1 to Controlled in the Contribution each will equal or exceed the total amount of any liabilities assumed (as determined under section 357(d)) by Controlled. The total fair market value of the assets transferred by Distributing 1 to Controlled in the Contribution each will equal or exceed the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization.
- (n) Any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (o) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by

- Distributing 1 that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 1 in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (p) The aggregate fair market value of the assets Distributing 1 transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.
  - (q) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and Internal Distribution.
  - (r) No two parties to the Internal Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
  - (s) At the time of the Internal Distribution, Distributing 1 will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.
  - (t) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 1 has in the Controlled stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Internal Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). Distributing 1 will not have an excess loss account in the Controlled stock or the stock of any direct or indirect subsidiary of Controlled.
  - (u) Apart from debt arising in the Continuing Transactions and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) at the time of, or after, the Internal Distribution.
  - (v) Payments made in connection with all continuing transactions (including the Continuing Transactions) between Controlled (or any entity controlled directly

or indirectly by Controlled) and Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms length.

- (w) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (x) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (y) The Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled or Distributing 1 (including any predecessor or successor of either corporation).
- (z) Immediately after the transaction (as defined in section 355(g)(4)), (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 1 or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before the Internal Distribution, or (iii) neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (aa) The Controlled Distribution paid by Distributing 1 to its creditors will not exceed the weighted quarterly average of the Distributing 1 debt owed to third parties for the 12-month period ending on the close of business on or about

Date 6, the last full business day before the date on which the Distributing 2 Board of Directors initially discussed the potential separation of Business B from Business A.

Distributing 2 makes the following representations regarding the External Distribution:

- (bb) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) after the External Distribution will not constitute stock or securities.
- (cc) Except for Controlled Restricted Shares that holders of Distributing 2 Restricted Stock will receive (the "Restricted Stock Distribution"), no part of the consideration distributed by Distributing 2 in the External Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2. In no event will the Restricted Stock Distribution represent more than 20 percent of the Controlled stock distributed in the External Distribution.
- (dd) Distributing 2 and Controlled will each treat all members of its SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (ee) The five years of financial information submitted for Business A conducted by the Distributing 2 SAG and for Business B2 conducted by Sub 4 and its subsidiaries (all members of the Controlled SAG following the Contribution) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (ff) Neither Business A conducted by the Distributing 2 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Distributing 2 SAG will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the External Distribution.
- (gg) Neither Business B2 conducted by the Controlled SAG (following the Contribution) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External

- Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Distributing 1 and its subsidiaries (all members of the Distributing 1 SAG) will have been the principal owners of the goodwill and significant assets of Business B2. Following the Internal and External Distributions, Controlled and its subsidiaries (all members of the Controlled SAG following the Contribution) will be the principal owners.
- (hh) Apart from the Continuing Transactions, the Distributing 2 SAG will continue the active conduct of Business A, independently and with its separate employees, following the External Distribution.
  - (ii) Apart from the Continuing Transactions, Controlled (through Sub 4 and its subsidiaries, all members of the Controlled SAG following the Contribution) will continue the active conduct of Business B2, independently and with its separate employees, following the External Distribution.
  - (jj) The External Distribution will be carried out for the Corporate Business Purposes. The External Distribution is motivated in whole or substantial part by the Corporate Business Purposes.
  - (kk) The External Distribution will not be used principally as a device for the distribution of the earnings and profits of Controlled or Distributing 2 or both.
  - (ll) There is no plan or intention to liquidate any member of the Distributing 2 SAG engaged in Business A or any member of the Controlled SAG engaged in Business B, to merge any member of either SAG with any other entity, or to sell or otherwise dispose of the assets of any member after the External Distribution, except in the ordinary course of business.
  - (mm) Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the External Distribution.
  - (nn) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 2 has in the Controlled stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the External Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the External Distribution, Distributing 2 will not have an excess loss account in the

stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.

- (oo) Apart from debt arising in the Continuing Transactions and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 1) at the time of, or after, the External Distribution.
- (pp) Payments made in connection with all continuing transactions (including the Continuing Transactions) between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms length.
- (qq) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (rr) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in section in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (ss) The External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled or Distributing 2 (including any predecessor or successor of either corporation).

- (tt) Immediately after the transaction (as defined in section 355(g)(4)), no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Controlled or Distributing 2.
- (uu) The receipt by Distributing 2 Shareholders of cash in lieu of fractional shares of Controlled stock resulting from the open market sale of these shares will be solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the Distributing 2 Shareholders from the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in the External Distribution. It is also intended that none of the Distributing 2 Shareholders will receive cash in an amount equal to or greater than the value of one full share of Controlled stock. Further, neither Controlled nor Distributing 2 is aware of any overall plan (within the meaning of section 355(e)) to acquire an ownership interest in Controlled through the purchase of bundled controlled shares sold in connection with the issuance of cash in lieu of fractional shares.
- (vv) Neither Distributing 2 nor Controlled will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period preceding the External Distribution.
- (ww) Neither Distributing 2 nor Controlled will be a U.S. real property holding corporation (as defined in section 897(c)(2)) immediately after the External Distribution.

### Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) The Contribution, followed by the Internal Distribution, will be a reorganization under section 368(a)(1)(D). Distributing 1 and Controlled each will be "a party to a reorganization" within the meaning of section 368(b).
- (2) Except for gain that will be recognized by Distributing 1 in an amount equal to the amount by which the Controlled Distribution exceeds the amount of the adjusted bases of the assets contributed by Distributing 1 to Controlled in the Contribution (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))), no gain or loss will be recognized by Distributing 1 on the Contribution (sections 361(a), 361(b)(1), 361(b)(3), and 357(a)).

- (3) No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the Contribution, plus the amount of gain recognized in Ruling 2 above, properly allocated among the assets received by Controlled in the Contribution (section 362(b)).
- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing 1 held that asset (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing 1 on the Internal Distribution (section 361(c)(1)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on the Internal Distribution (section 355(a)(1)).
- (8) Immediately following the Internal Distribution, the basis that Distributing 2 had in a share of Distributing 1 stock before the Internal Distribution will be allocated between the share of Distributing 1 stock with respect to which the Internal Distribution is made and the share of Controlled stock received with respect to the share of Distributing 1 stock in proportion to the fair market value of each (section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)).
- (9) The holding period of the Controlled stock received by Distributing 2 in the Internal Distribution will include the holding period of the Distributing 1 stock on which the Internal Distribution is made, provided the Distributing 1 stock is held by Distributing 2 as a capital asset on the date of the Internal Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with section 312(h) and Treas. Reg. §§1.312-10(a) and 1.1502-33(f)(2).
- (11) Any payments between Distributing 1 and Controlled that are made following the Internal Distribution pursuant to the Contingent Agreements regarding obligations that (i) have arisen or will arise on or before the Internal Distribution (either for a taxable period ending on or before the Internal Distribution, or for a taxable period beginning before but ending after the Internal Distribution) and (ii) will not have become fixed and ascertainable until after the Internal Distribution, will be treated as occurring immediately before the Internal Distribution. (cf. *Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).



- (12) No gain or loss will be recognized by Distributing 2 on the External Distribution (section 355(c)).
- (13) No gain or loss will be recognized by (and no amount will be included in the income of) any of the Distributing 2 Shareholders on the External Distribution (section 355(a)(1)); however, see caveat (vii) below.
- (14) Immediately following the External Distribution, the basis that each of the Distributing 2 Shareholders had in a share of Distributing 2 stock before the External Distribution will be allocated between the share of Distributing 2 stock with respect to which the External Distribution is made and the share of Controlled stock received with respect to the share of Distributing 2 stock (including any fractional share interest in Controlled stock to which the shareholder may be entitled) in proportion to the fair market value of each (section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)).
- (15) The holding period of the Controlled stock received by each of the Distributing 2 Shareholders in the External Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include the holding period of the Distributing 2 stock on which the External Distribution is made, provided the Distributing 2 stock is held by the shareholder as a capital asset on the date of the External Distribution (section 1223(1)).
- (16) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with section 312(h) and Treas. §§ 1.312-10(b) and 1.1502-33(e)(3).
- (17) Following the External Distribution, Controlled will not be a successor of Distributing 2 for purposes of section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" (under section 1504(b)) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated Federal income tax return with Controlled as the common parent.
- (18) The receipt by each of the Distributing 2 Shareholders of cash in lieu of fractional shares of Controlled stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to such shareholder as part of the External Distribution and then had been disposed of by such shareholder for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (14) and the holding period attributed to the fractional shares in ruling

(15), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder ( section 1001).

- (19) Any payments between Distributing 2 and Controlled that are made following the External Distribution pursuant to the Contingent Agreements regarding obligations that (i) have arisen or will arise on or before the External Distribution (either for a taxable period ending on or before the External Distribution, or for a taxable period beginning before but ending after the External Distribution) and (ii) will not have become fixed and ascertainable until after the External Distribution, will be treated as occurring immediately before the External Distribution. (cf. *Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C. B. 84).

### Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distributions are used principally as a device for the distribution of earnings and profits of Distributing 1, Distributing 2, Controlled, or a combination thereof;
- (iii) Whether the Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in a distributing corporation or a controlled corporation (see § 355(e) and § 1.355-7).
- (iv) The Federal income tax treatment of the Refinancings;
- (v) The Federal income tax treatment of payments for any services that may be rendered at cost under the Transitional Agreements;
- (vi) Whether Distributing 1's contribution of certain trademarks to Controlled will constitute a transfer of property for purposes of section 351; and
- (vii) The Federal income tax consequences of the transactions involving the former option holders and the Restricted Stock Transactions, including the

impact under § 83(b) of the Distributions to the holders of Distributing 2 Restricted Stock.

#### Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the returns that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representatives.

Sincerely,

Mary E. Goode  
Mary E. Goode  
Senior Counsel  
Office of Associate Chief Counsel (Corporate)

cc: